

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

**OCEANS OF IMAGES  
PHOTOGRAPHY, INC.,**

**Plaintiff,**

**v.**

**Case No. 8:11-cv-1160-T-30AEP**

**FOSTER AND SMITH, INC.,**

**Defendant.**

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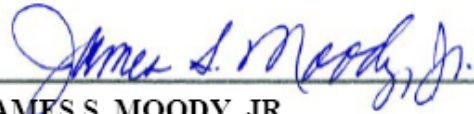
**ORDER**

THIS CAUSE comes before the Court upon the parties' motions in limine (Dkts. 71, 75 & 77-80). On May 20, 2013, the Court held a hearing on the motions in limine and heard argument from counsel. For the reasons stated on the record, it is therefore ORDERED AND ADJUDGED that:

1. Plaintiff's Motion in Limine to Exclude the Expert Testimony of Jeffrey Sedlik (Dkt. 71) is DENIED.
2. Defendant's Motion in Limine to Exclude Evidence of F&S's Gross Revenue (Dkt. 80) is GRANTED.
3. Plaintiff's Motion in Limine to Preclude Defendant from Introducing Spreadsheets and Other Unidentified Information at Trial (Dkt. 75) is DENIED AS MOOT.

4. Plaintiff's Motion in Limine to Exclude Excerpts of the Purchase Agreement (Dkt. 77) is DENIED.
5. Defendant's Motion in Limine to Exclude Evidence Obtained from the Wayback Machine (Dkt. 78) is DENIED without prejudice to Defendant to raise this objection at trial if Plaintiff does not authenticate the information as stated in *St. Luke's Cataract and Laser Institute, P.A. v. Sanderson*, 2006 WL 1320242 (M.D. Fla. May 12, 2006) and *Telewizja Polska USA, Inc. v. Echostar Satellite Corporation*, 2004 WL 2367740 (N.D. Ill. Oct. 15, 2004). The instant ruling with respect to Dkt. 78 is a departure from what the Court stated on the record. After reviewing the *St. Luke's* and *Telewizja* cases, the Court agrees that the Wayback Machine evidence is not hearsay. However, this evidence must be properly authenticated and Plaintiff will have to provide testimony from an Internet Archive representative with personal knowledge of the contents of the Internet Archive website with respect to any evidence that cannot be authenticated through the testimony of Melissa Read.
6. Defendant's Motion in Limine to Preclude Evidence Relating to Claims and Damages Not Pleaded in Plaintiff's Complaint (Dkt. 79) is DENIED without prejudice to Defendant to take depositions on these additional claims. To the extent that the additional claims are not pleaded in the complaint, the Court grants Plaintiff's oral motion to amend the complaint to conform to the evidence.

**DONE** and **ORDERED** in Tampa, Florida on May 20, 2013.

  
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**JAMES S. MOODY, JR.**  
**UNITED STATES DISTRICT JUDGE**

**Copies furnished to:**  
Counsel/Parties of Record

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